TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 122

SAMUEL A. MYERS AND HARRY MYERS, COPARTNERS AS S. A. & H. MYERS, PETITIONERS,

vs.

INTERNATIONAL TRUST COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE COUNTY OF SUFFOLK, STATE OF MASSACHUSETTS

PETITION FOR CERTIORARI FILED [redacted]

CERTIORARI GRANTED JUNE 1, 1926

(31,221)

(31.221)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 498

SAMUEL A. MYERS AND HARRY MYERS, COPARTNERS AS S. A. & H. MYERS, PETITIONERS,

vs.

INTERNATIONAL TRUST COMPANY

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT FOR THE COUNTY OF SUFFOLK, STATE OF MASSACHUSETTS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 21, 1925

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

SUFFOLK, ss. IN EQUITY.

INTERNATIONAL TRUST COMPANY

vs.

SAMUEL A. MYERS, HARRY MYERS AND S. A. AND H. MYERS, PARTNERSHIP.

PETITION

Respectfully represents the International Trust Company, petitioner, which says it is a corporation organized under the laws of the Commonwealth of Massachusetts and having a usual place of business in Boston, in the County of Suffolk.

That S. A. Myers and Harry Myers, respondents, are residents of the Town of Brookline in the County of Norfolk; that S. A. and H. Myers is a partnership consisting of the said Samuel A. Myers and said Harry Myers as partners carrying on a business in the City of Boston in the County of Suffolk, said business consisting of the manufacture and sale of young men's and boys' clothing.

That on or about the 2nd day of October, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "A," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 2nd day of November, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "B," payable to the order of itself; that

before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 10th day of November, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "C," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 13th day of November, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "D," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 1st day of December, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "E," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 8th day of December, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "F," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers

and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 11th day of December, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "G," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 13th day of December, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "H," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 15th day of December, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "I," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 18th day of December, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "J," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the

said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 28th day of January, 1917, an involuntary petition in bankruptcy was filed in the United States District Court for the District of Massachusetts against the said partnership of S. A. and H. Myers; that thereafter an offer in composition of 40c on the dollar was made by the said partnership which offer was duly confirmed by said court; that the claim of the petitioner was allowed in the sum of $19,883.55; that on account of said composition the sum of 20 per cent, namely $3,976.71 in cash has been received by the said International Trust Company and 20 per cent in notes which have not yet matured.

That the respondent Samuel A. Myers and Harry Myers are the sole owners of the partnership property and the sole persons interested therein and have no other assets than their interest in the partnership property which may be attached at law.

That in the management of said partnership the duties of the partners are divided, namely, that the said Harry Myers is the salesman for said partnership and confines his work exclusively to the sale of its merchandise and has nothing to do with the financing of the business or manufacturing of said goods; that he spends a large part of his time in traveling and selling clothing; that the said S. A. Myers is in charge of the office, buys the materials, directs the finances and supervises the manufacturing of the merchandise of said business.

That your petitioner is informed and believes and therefore alleges that the said S. A. Myers and the said Harry Myers are not proper persons to remain in control of said business pending these proceedings but need supervision and control to prevent the waste of the assets of said partnership; that previous to the aforesaid bankruptcy petition the said S. A. Myers and the said Harry Myers neglected said business and permitted it to get into a precarious condition; that the said Harry Myers is in ill health and unable to properly attend to his duties; that the said S. A. Myers through the intemperate use of liquor made himself incapable and unfitted to attend to the proper performance of his duties.

WHEREFORE your petitioner respectfully prays that:

1. It may be allowed to establish its debt against the said Harry Myers.

2. Upon the establishment of the petitioner's debt the assets of said partnership may be used to satisfy the same.

3. The respondent S. A. Myers be restrained and enjoined from transferring, pledging, hypothecating or otherwise disposing of his interest in said partnership.

4. The said Harry Myers be restrained and enjoined from transferring, pledging, hypothecating or otherwise disposing of his interest in said partnership.

5. The respondents the said S. A. Myers and the said Harry Myers as individuals and as partners be restrained from wasting or disposing of the assets of said firm.

6. A receiver be appointed to take over and operate the business of said partnership and to conduct the same and to conserve the assets until further order of this court.

7. Your petitioner may have such further relief as this honorable court may deem proper.

By its Attorney,

JOHN R. LAZENBY.

Then personally appeared John R. Lazenby of the above named petitioner and made oath that the statements above subscribed to by him are true to the best of his knowledge and belief.

WM. P. EVARTS,
Notary Public.

Filed Sept. 26, 1917.

A.

$2000.00 Boston, Oct 2, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

14820

P. N. P.
Feb. 2, 1917
N. P.
Fees 2.06

No. Due Feb. 2/17 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

B.

$2000.00 Boston, Nov. 2, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

5204

P. N. P.
Mar. 2, 1917
C. B. P.
Fees 2.04

No. Due Mar. 2 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers

C.

$2000.00 Boston, Nov. 10, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received..

6642

P. P. P.
Mar. 12, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Mar. 10 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

D.

7133

$2000.00 Boston, Nov. 13, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

P. N. P.
Mar. 13, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Mar. 13 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

E.

9927

$2000.00 Boston, Dec. 1, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

P. N. P.
April 2, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Apr. 1/17 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

F.

10843

$2000.00 Boston, Dec. 8, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

P. N. P.
April 9, 1917
C. B. P.
N. P.
Fees 1.56

No. Due Apr. 8/17 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

G.

$2000.00 Boston, Dec. 11, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

11144

P. N. P.
Apr. 11, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Apr. 11/17 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

H.

$2000.00 Boston, Dec. 13, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

11510

P. N. P.
April 13, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Apr. 13/17 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

I.

$2000.00 Boston, Dec. 15, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

11714

P. N. P.
April 16, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Apr. 15 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

J.

$2000.00 Boston, Dec. 13, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

12012

P. N. P.
April 18, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Apr. 18/17 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

DEFENDANTS' ANSWER.

The defendants admit that the International Trust Company is a corporation duly organized under the laws of the Commonwealth of Massachusetts.

The defendants admit that S. A. Myers and Harry Myers, respondents, are copartners under the firm name and style of S. A. & H. Myers, carrying on business in Boston in the County of Suffolk.

The defendants admit that the several notes set out in the plaintiff's bill of complaint were signed by the said partnership and endorsed by the said Samuel A. Myers and said Harry Myers.

The defendants admit that the said Harry Myers is the salesman of said partnership and that said Samuel A. Myers is in charge of the office.

The defendants deny that the said Samuel A. Myers and said Harry Myers neglected said business, and deny that said Harry Myers is in ill health and that said Samuel A. Myers is incapable and unfitted to attend to the proper performance of his duties.

The defendants deny that on or about the twenty-eighth day of January 1917 an involuntary petition in bankruptcy was filed in the United States District Court for the District of Massachusetts against said partnership of S. A. & H. Myers, and say that on or about said twenty-eighth day of January 1917 an involuntary petition in bankruptcy was filed against Samuel A. Myers and Harry Myers, indi-

vidually, said bankruptcy case being numbered 24,571 of the United States District Court for the District of Massachusetts; that said International Trust Company proved its claim in bankruptcy against the alleged bankrupts Samuel A. Myers and Harry Myers, and that subsequently an offer was made in composition by said Samuel A. Myers and Harry Myers, a copy of which offer in composition is hereto annexed marked "A"; that said International Trust Company participated in said proceedings and proved its claim; that thereafter said composition offer was confirmed by said Court, a copy of which confirmation is hereto annexed marked "B," and that the dividend under said offer of composition was paid to and received by said plaintiff as provided for in said offer of composition.

Wherefore the defendants say that the plaintiff's claim as alleged in said Bill has been discharged by said confirmation in bankruptcy.

And your defendants deny each and every other allegation in the plaintiff's bill of complaint, except those herein expressly and specifically admitted.

By their Attorneys,
JULIUS NELSON
SAMUEL O. REINSTEIN

Filed Nov. 30, 1917.

ORDER FOR APPOINTMENT OF COMMISSIONER TO TAKE EVIDENCE.

In the above entitled case, at the hearing of the same before Mr. Justice Morton, it is ordered, under the provisions of Chancery Rule, No. XXXV., at the request of Plaintiff that Madella H. Small be, and she hereby is, appointed Commissioner to take the evidence in said case, to be reported to the Supreme Judicial Court.

By the Court,
GUY H. HOLLIDAY,
Asst. Clerk.

Filed Nov. 19, 1924, as of Oct. 27, 1924.

RULINGS AND FINDINGS.

The facts in the case were as follows:

On January 27, 1917, a creditors' petition was filed in bankruptcy against "Samuel A. Myers and Harry Myers,

co-partners, trading as S. A. and H. Myers." On February 10, 1917, "partnership schedules" were filed in which it was stated that the partners had no individual debts or assets

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["A" is printed as Exhibit 5 on page 18.]
["B" is printed as Exhibit 8 on page 21.]

and which included the plaintiff as a creditor on notes to the amount of twenty thousand dollars. On the same day a petition for a meeting of creditors was filed to act upon a proposal for composition; and on March 3 an offer of composition was made. This offer was confirmed upon May 28, 1917, and the plaintiff accepted composition on its notes. The bill was brought on September 26, 1917, in effect to hold the defendant Harry Myers liable as endorser on the said notes of twenty thousand dollars which he and S. A. Myers had endorsed individually. These notes, ten in number, were signed, "S. A. and H. Myers," payable to "ourselves" and endorsed, "S. A. and H. Myers, S. A. Myers, Harry Myers," except as to one note not endorsed by Harry Myers.

The defendant's claim is that the confirmation of the composition offer and the acceptance by the plaintiff of the dividend thereunder discharged the individual obligations of the defendants as endorsers. The question involved is a Federal question, to be determined by Federal law. In *Francis* v. *McNeal*, 228 U. S., 695, Mr. Justice Holmes, at page 701 states, "that it would be an incongruity to grant a discharge from the debt considered as joint but to leave the same persons liable for it considered as several," and holds in substance that if a partnership is in bankruptcy partners as individuals are also bankrupt. This decision in my opinion controls this case, unless as claimed the statement of the partners that they had no individual indebtedness estopped them from setting up such a claim. This statement does not in my opinion warrant the inference that the partners intended to have the bankruptcy proceedings only against the partnership and I accordingly rule that such a statement does not prevent them from taking advantage of the law as laid down in the case referred to.

MARCUS MORTON,
J. S. C.

1924, Nov. 12

FINAL DECREE.

This case came on to be heard on the merits and, after the introduction of the evidence taken before the commissioner appointed by the court, was argued by counsel for the defendants and counsel for the plaintiff; and thereupon, upon consideration thereof, be it and it is hereby

ORDERED, ADJUDGED AND DECREED that the confirmation of May 28, 1917 of the defendants' offer in composition is a bar to this suit, and that the bill of complaint be and it is hereby dismissed without costs to the defendants.

By the Court,
HENRY E. BELLEW,
Assistant Clerk.

December 4, 1924.
(MORTON, J.)

APPEAL FROM FINAL DECREE.

And now comes the plaintiff International Trust Company in the above entitled case and appeals from the final decree entered therein.

By its Attorney,
JOHN R. LAZENBY.

Filed Dec. 15, 1924.

COMMISSIONER'S REPORT.

Monday, October 27, 1924.

The COURT: There doesn't seem to be much in dispute.

Mr. LAZENBY: Purely a question of law, nothing else.

The COURT: You stand on your question of law?

Mr. LAZENBY: Yes, and it is agreed that in 1916, and during the dates of this bankruptcy proceeding, there was a partnership of S. A. & H. Myers consisting of two partners, Samuel A. Myers and Harry Myers, and that they carried on a clothing business in Boston on Otis Street. Now first, I wish to offer the note of October 2, 1916.

(Note dated October 2, 1916, introduced and marked "Ex. 1.")

The COURT: The defendant admits executing several notes.

Mr. LAZENBY: It is just to put the form of the note in. It is a note of $2000. (Reads note.) Is there any need of putting the others in?

Mr. McCLENNEN: The only thing worth calling attention to is that they are all endorsed in form "S. A. Myers, Harry Myers," except the second note. You will notice that the second note differs from all the others in that Harry Myers didn't endorse it.

Mr. LAZENBY: Then I will just put the list in of the notes with the amounts.

The COURT: You don't need to do that. They are all admitted by the answer; the execution is admitted.

Mr. LAZENBY: The next exhibit is the creditors' petition of January 27, 1917.

(Creditor's petition dated January 27, 1917, introduced and marked "Ex. 2.")

Mr. LAZENBY: The next is the schedules filed by Samuel A. Myers and Harry Myers as S. A. & H. Myers, February 10, 1917.

(Schedules introduced and marked "Ex. 3.")

Mr. LAZENBY: This is an original signed by the two Myers. On the outside appears the docketing "Samuel A. Myers, Harry Myers, S. A. & H. Myers of Boston." I wish to call your Honor's attention to two things in this. (Reading.)

"To the Honorable James M. Morton, Junior, Judge of the District Court. Samuel A. Myers of Boston and Harry A. Myers of Brookline respectfully represent that they have been partners under the firm name of S. A. & H. Myers, having their principal place of business in Boston in the county of Suffolk, that the schedule hereto attached marked "A" and verified by their oaths contains a full statement of all of the debts of said partners, as far as possible the names and places of residence of their creditors, and such further statements concerning such debts as are required by the provisions of said acts. Said Samuel Myers further states that he has no individual debts and no individual assets except household furniture and wearing apparel to the value of $300 claimed to be exempt under the Revised Laws of Massachusetts, chapter 177, section 34." That statement is in writing and has been substituted for the following which has been stricken out:

"That the schedule hereto annexed marked "C," verified by his oath contains a full and true statement of all his individual debts, as far as possible the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts, and that the schedule hereto annexed marked "D," verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts."

Harry Myers did exactly the same thing. In Schedule A appears the International Trust Company as a creditor: "International Trust Co., 45 Milk Street, Boston, Massachusetts, borrowed money, notes, $20,000." There is no list of individual creditors of either of the partners attached.

I offer next a certified set of papers from the clerk's office of the district court. The first is a petition for the calling of the meeting of the creditors to act upon a proposal for composition. The second is an offer in composition; the third is a motion to confirm the offer of composition; the fourth is the notice issued by the clerk's office to creditors, calling a meeting of creditors; the fifth is the confirmation of the composition.

(Papers marked respectively "Ex. 4," "Ex. 5," "Ex. 6," "Ex. 7" and "Ex. 8.")

The COURT: These are all papers referring to the original petition? There is only one bankruptcy proceeding; they must all refer to one bankruptcy proceeding.

Mr. LAZENBY: Oh, yes. That is the plaintiff's case.

Mr. McCLENNEN: I will get you to agree to the following things, Mr. Lazenby. Mr. Lazenby agrees that the International Trust Company proved a claim on all these notes against the partnership for $20,000, less interest discount, because some of the notes were not due at the time the petition was filed and that claim was filed on March 3, 1917. It may not be necessary, but will make it more definitely clear; he has put in the order confirming the composition. There was an appeal from that order, and the mandate of the Circuit Court of Appeals confirming that order is dated August 30, 1917; the original order having

been entered May 28, 1917, and the confirmation which is set forth in the mandate is August 25, 1917. He concedes the following credits, 20% admitted by the bill of complaint, $3,976.71; credit balance on the books of the bank of $4.54; note which they subsequently collected of $110; a composition note of $1,988.34; second composition note of $1,988.34, making a total of $8,067.93, which would as a matter of computation leaving a balance from $20,000 of $11,932.07. The precise amount for which the claim was allowed, rebating interest, was $19,883.85.

In case your Honor should have seen this name "International Trust Co. vs. Myers," it may be of interest, although not bearing on the issue we have here, to know this situation. In these bankruptcy proceedings, the International Trust Company opposed composition on the ground of misstatements which they said had been made by the Myers. They failed in that position. They then sued on the notes on the ground that the discharge in composition had not discharged the Myers because of these statements. They prevailed in the superior court here; they prevailed in the supreme court of Massachusetts, and the case was then taken to the supreme court of the United States which held in 263 U. S., 64, that the discharge was a bar, and that having contested on the issue as they had in the bankruptcy court, they were estopped to contest on that issue in the subsequent suit. I would like to have it appear, possibly it has already, that there was no adjudication.

I hereby certify that the foregoing is a true record of the hearing reported by me in the case of International Trust Co. vs. Myers heard before Morton, J., in the Equity Merit Session, Superior Court, Suffolk County.

MADELLA H. SMALL,
Commissioner.

Filed Dec. 19, 1924.

Copy,
Attest:

Clerk.

EXHIBIT 1.

$2000 00/100 BOSTON, OCT. 2, 1916

.....Four months after date we promise to pay to the order of.....Ourselves.....
.....Two thousand.....00/100...
Dollars Payable at International Trust Co.
Value received
No.....Due Feb. 2/17 S. A. & H. Myers

14820

(Endorsed) S. A. & H. Myers
A. A. Myers
Harry Myers

(Written across the face) P. N. P.
Feb. 2, 1917
C. B. P.
N. P.
Fees 2.06

Chester B. Pierce, Notary Public

Superior Court
Ex. 1
M. H. Small
Stenographer

COMMONWEALTH OF MASSACHUSETTS.
COUNTY OF SUFFOLK, }
CITY OF BOSTON. }

On the 2nd day of February in the year of our Lord, one thousand nine hundred Seventeen I, CHESTER B. PIERCE, NOTARY PUBLIC, duly appointed and qualified for the Commonwealth of Massachusetts, practicing in the City of Boston, at the request of the Treasurer of the INTERNATIONAL TRUST CO., of Boston, went with the original Note, which is hereto annexed, the time therein limited, having full elapsed, and demanded payment thereof of the INTERNATIONAL TRUST CO., Boston, Mass., and payment was refused, the answer being no order to pay.

The Note remaining unpaid, I duly and officially notified the endorser of said dishonor by written notice addressed to them, and mailed the same, postage prepaid, under cover to them in said notice requiring payment.

WHEREFORE, I, the said Notary, by request as aforesaid, have protested and by these presents do solemnly protest against the maker of said Note, the endorser thereof, and all others concerned therein, for Exchange, Re-Exchange and all Costs, Charges, Damages, (Seal) and Interest, Suffered and Sustained, or to be Suffered and Sustained, by reason or in consequence of the non-payment thereof.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my Notarial Seal, the day and year first above written.

FEES	(Revenue Tax,	
	(Protesting for Non-Payment,	2.
	(Postage, Travel and Expense,	.06
		2.06

Chester B. Pierce (Notary
45 Milk Street, (Public
Boston.

STIPULATION AS TO PRINTING.

It is hereby agreed that Creditors' Petition, Exhibit No. 2, and Debtors' Schedules, Exhibit No. 3, need not be printed in the record but may be produced at the time of argument.

JOHN R. LAZENBY,
Attorney for Plaintiff.

DUNBAR, NUTTER & McCLENNEN,
Attorneys for Defendants.

Filed Dec. 19, 1924.

Superior Court
Ex. 4
M. H. Small
Stenographer

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In the matter of

Samuel A. Myers and Harry Myers } In Bankruptcy
Alleged Bankrupts. } Number 24,571

To the Honorable James M. Morton, Jr.,

Judge of the District Court of the United States for the District of Massachusetts.

The above-named bankrupts respectfully represent that a composition of forty per cent, upon all unsecured debts not entitled to a priority Twenty per cent in cash and two notes for ten per cent each, payable in three and four months from date, in satisfaction of their debts is to be proposed before adjudication by them to their creditors, as provided by the Acts of Congress relating to Bankruptcy, and they verily believe that the said composition will be accepted by a majority in number and in value of their creditors whose claims are allowed.

Wherefore, they pray that a meeting of their creditors may be duly called to act upon said proposal for a composition, according to the provisions of said Acts and the rules of Court.

Samuel A. Myers
Harry Myers

Subscribed and sworn to before me this twelfth day of February A. D. 1917.

Samuel O. Reinstein,
Justice of the Peace.

ENDORSED.
Number 24,571
In Bankruptcy
Law of 1898
Petition for Meeting to Consider Composition
In the matter of
Samuel A. Myers and Harry Myers
Alleged Bankrupts.
Filed in Court this 10th
day of February A. D. 1917.
11.30 A. M.

EXHIBIT 5.

(Offer of Composition.)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In the matter of
Samuel A. & Harry Myers
Alleged Bankrupts
} In Bankruptcy
Number 24,571

TO THE HONORABLE JAMES M. MORTON, Jr., Judge of said Court:

Respectfully represents Samuel A. Myers, of Boston in the County of Suffolk in said District, and Harry Myers, of Brookline in the County of Norfolk, and district aforesaid: — that the said Samuel A. Myers & Harry Myers have been examined in open Court at a meeting of their creditors, that they have filed in Court a schedule of their property and a list of creditors to be filed by bankrupts; and that they now offer the following terms of composition before adjudication to creditors, to wit:—

To pay all claims entitled to priority in full, and to pay all unsecured creditors forty cents on the dollars of their just claims, 20% in cash and two notes for 10% each, payable in three and four months, respectively. The consideration to be thus paid, and the money necessary to pay all debts which have priority, and the costs of the proceedings, to be deposited in the National Merchant's Bank of Boston, in accordance with the law in such cases.

Samuel A. Myers
Harry Myers

ENDORSED.

Number 24,571
In Bankruptcy Law of 1898
In the matter of
Offer of Composition.
Samuel A. & Harry Myers
Alleged Bankrupts.
Filed March 3, 1917

EXHIBIT 6.

(Application for Confirmation of Composition.)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In the matter of
Samuel A. and Harry Myers
Alleged Bankrupts. } In Bankruptcy

TO THE HONORABLE JAMES M. MORTON, JR.,
JUDGE OF THE DISTRICT COURT OF THE
UNITED STATES FOR THE DISTRICT OF
MASSACHUSETTS

At Boston, in said District, on the twenty-third day of March, A. D. 1917, now come Samuel A. Myers & Harry Myers, the above-named alleged bankrupts and respectfully represent to the court that, after they had been examined in open court (or at a meeting of their creditors) and had filed in court a schedule of their property and a list of their creditors, as required by law, they offered terms of composition to their creditors, which terms have been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number represents a majority in amount of such claims; that the consideration to be paid by the alleged bankrupts to their creditors, the money necessary to pay all debts which have priority, and the costs of the proceedings, amounting in all to the sum of Twenty-one thousand six hundred twenty-six and 08/100 (21626.08/100) dollars, has been deposited, subject to the order of the judge, in the Merchants National Bank, of Boston, a designated depository of money in bankruptcy cases.

Wherefore the said Samuel A. Myers & Harry Myers respectfully ask that the said composition may be confirmed by the court.

Samuel A. Myers
Harry Myers
Alleged Bankrupts.

By their attorney
Samuel O. Reinstein.

ENDORSED.
Number 24,571
In Bankruptcy
Law of 1898
In the matter of
Samuel Myers
Harry Myers
Alleged Bankrupts

Application for Confirmation of Composition.

.....
Creditor

Address.....
Filed and allowed 190

Referee
United States District Court,
Filed in clerk's office.
Mass. Dist. Mar. 23, 1917, 11 A. M.
From the office of
Samuel O. Reinstein
18 Tremont St.
Boston

Attached to the foregoing is the following:

EXHIBIT 7.

U. S. DISTRICT COURT.
Clerk's Office.

In the matter of
Samuel A. Myers
Harry Myers
Bankrupt, (No. 24571)

Boston, March 23, 1917

Order of notice on the confirmation of composition is made returnable April 2, 1917, on or before which day all persons interested may enter objections to the confirmation at the office of the Clerk of the U. S. District Court.

Yours respectfully,
WILLIAM NELSON, Clerk.

In referring to Bankruptcy cases please give the number.

ENDORSED.

Clerk's Office, U. S. District Court
District of Massachusetts.
111 Federal Building, Boston.

Samuel A. Myers and Harry Myers,

Official Business.
March 22, 1917.

Any person using this card, to avoid payment of postage on private matter of any kind will be subject to a fine of three hundred dollars. 24571.

Duplicate
April 2, 1917.

EXHIBIT 8.

"The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge."—Chap 3, Sec. 14, Sub. Div. C of the Bankruptcy Act.

UNITED STATES OF AMERICA.

In the District Court of the United States.
For the District of Massachusetts.

In the matter of	
Samuel A. Myers	In Bankruptcy
and	
Harry Myers	No. 24571
Alleged bankrupts	

An application for the confirmation of the composition offered by the bankrupt having been filed in Court, and it appearing that the composition has been accepted by a majority in number of creditors whose claims have been allowed and of such allowed claims; and the consideration and the money required by law to be deposited, having been deposited as ordered in such place as was designated by the Judge of said Court, and subject to his order; and it also appearing that it is for the best interests of the

creditors; and that the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge, and that the offer and its acceptance are in good faith and have not been made or procured by any means, promises, or acts contrary to the acts of congress relating to bankruptcy: it is therefore hereby ordered that the said composition be, and it hereby is confirmed.

Witness, the Honorable James M. Morton, Jr., Judge of said Court, and the seal thereof, this 28th day of May, A. D. 1917.

Mary E. Prendergast,
Deputy Clerk.

(Seal)

DISTRICT COURT OF THE UNITED STATES.
District of Massachusetts.

I, JOHN E. GILMAN, Jr., Deputy Clerk of the District Court of the United States for the District of Massachusetts, and during the temporary absence of the Clerk in charge of the Clerk's Office of said Court, and the custodian of its files and records, do hereby certify that the foregoing are true copies of the Petition for Meeting to Consider Composition, Offer of Composition, Application for Confirmation of Composition, and Order Confirming Composition, with all the endorsements thereon, on file in the Clerk's Office of said Court, in the cause in bankruptcy entitled,

IN THE MATTER OF
SAMUEL A. MYERS et al.,

Alleged Bankrupts,

and numbered 24571 on the Bankruptcy Docket of said Court.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said Court, at Boston, in said District, this sixth day of October, A. D. 1924.

(Seal)

JOHN E. GILMAN, JR.,
Deputy Clerk.

(MEMORANDUM OF AMOUNT CLAIMED TO BE DUE.)

Interest on notes — $20,000 at 6% from due dates to August 25, 1917	$502.67
(1)	
Interest on $15,908.75 from August 25, 1917 to December 25, 1917	318.18
(2)	
Interest on $13,920.41 from December 25, 1917 to January 25, 1918	69.60
(3)	
Interest on $11,932.07 from January 25, 1918, to October 9, 1924	4,802.66
	5,693.11
	11,932.07
	$17,625.18

This seems approximately correct.

E. F. McCLENNEN
J. R. LAZENBY

(1) $20,000 less $4091.25
(2) $15,908.75 less $1,988.34
(3) $13,920.41 less $1,988.34

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH
AT BOSTON

April 16, 1925.

IN THE CASE OF

INTERNATIONAL TRUST COMPANY

v.

SAMUEL A. MYERS ET ALI

pending in the Superior Court in the County of Suffolk

ORDERED that the clerk of said court in said county make the following entry under said case in the docket of said court, viz.,—

Decree for defendants reversed.
Decree entered for plaintiff.
The form of the decree is to be settled in the Superior Court.

BY THE COURT,

April 16, 1925. Walter F. Frederick, Clerk.

(Seal)

COPY,
ATT.

Francis A. Campbell, Clerk of the Superior Court.

Brief Statement of the Grounds and Reasons of the Decision.

See opinion on file. [Printed on pages 29-34 below.]

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT IN EQUITY
No. 14826.

INTERNATIONAL TRUST COMPANY

v.

SAMUEL A. MYERS ET AL

FINAL DECREE

This case came on to be heard on the application of plaintiff for the entry of a final decree after rescript from the Supreme Judicial Court reversing the decree entered herein on the fourth day of December 1924 and thereupon, upon consideration thereof, be it and it is hereby

ORDERED, ADJUDGED and DECREED that the confirmation on May 28, 1917 of the defendants' offer in composition is not a bar to this suit, and that the defendant Samuel A. Myers is liable to the plaintiff for the sum of Eighteen Thousand Fifty-one and Eighty-two One-hundredths Dollars ($18,051.82/100) and that the defendant Harry Myers is liable to the plaintiff for a part of the same sum, namely Sixteen Thousand Two Hundred Forty-six and Sixty-four One-hundredths Dollars ($16,246.64/100) and that judgment enter for the plaintiff in said respective sums against said defendants respectively and against said defendants jointly for costs in the sum of one hundred fifty-five and 60/100 dollars ($155.60), and that thereupon execution issue therefor.

By the Court,

May 5, 1925. HENRY E. BELLEW,
Assistant Clerk.

I oppose the entry of the foregoing decree but deem it to be in accord with the rescript of the Supreme Judicial Court.

Edward F. McClennen,
Attorney for Defendants.

SUFFOLK, ss. SUPERIOR COURT.

I hereby certify that the foregoing is a true copy of the Final Decree after Rescript in which International Trust Company is Plaintiff and Samuel A. Myers, Harry Myers and S. A. and H. Myers, Partnership, are Defendants, entered on the fifth day of May, A. D. 1925, by order of our said Court.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Superior Court, at Boston, in said County of Suffolk, this thirteenth day of May, A. D. 1925.

Francis A. Campbell,
Clerk.

COMMONWEALTH OF MASSACHUSETTS

I, WALTER PERLEY HALL, Chief Justice of the Superior Court of the Commonwealth of Massachusetts,

DO CERTIFY, that FRANCIS A. CAMPBELL, Esq., whose signature is affixed to the papers hereunto annexed, is Clerk of said Superior Court, within and for the County of Suffolk, and hath the keeping of the files, records, and proceedings of said Court, within and for said County; Also, of the late Court of Common Pleas, within and for said County, and of the late Superior Court of the County of Suffolk, aforesaid; tha the is, by Law, the proper person to make out and to certify copies of the files, records, and proceedings of said several Courts; that full faith and credit are and ought to be given to his acts and attestations done as aforesaid; and that his attestation to the papers hereunto annexed, being numbered 1 to 25 inclusive, [*meaning in this print, pages 1 to 27 above*] of the files, records, and proceedings of the said Superior Court, is in due form.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of said Court to be hereunto affixed, this thirteenth day of May, in the year of our Lord one thousand nine hundred and twenty-five.

WALTER PERLEY HALL,

[Seal] Chief Justice of the Superior Court.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT.

I, Francis A. Campbell, Clerk of the Superior Court within and for said County of Suffolk, hereby certify that the printed pages hereto annexed, numbered one to twenty-two inclusive [*meaning in this print pages 1 to 24 above*] are true copies of the papers made a part of the case of INTERNATIONAL TRUST COMPANY *vs.* SAMUEL A. MYERS ET ALS., and numbered 14826 Equity, on the files of said Court, or so much thereof as was necessary fully to present the questions of law to the Supreme Judicial Court of said Commonwealth, prepared by me and transmitted to said Supreme Judicial Court in accordance with the laws of said Commonwealth.

I further certify that pages numbered twenty-three to twenty-five inclusive [*meaning in this print pages 25 to 27 above*] thereto annexed are true copies of the rescript of said Supreme Judicial Court made in said case, and the Final Decree of said Superior Court entered in accordance with said rescript.

WITNESS my hand and the seal of said Superior Court, at Boston, in said County and Commonwealth, this thirteenth day of May, A. D. 1925.

[Seal]

FRANCIS A. CAMPBELL,
Clerk.

INTERNATIONAL TRUST COMPANY *vs.* SAMUEL A. MYERS & others.

Suffolk. Argued January 19, 1925. Opinion filed April 17, 1925.

Present: RUGG, C.J., BRALEY, CROSBY, CARROLL, & WAIT, JJ.

CARROLL, J. This is an appeal from a final decree dismissing the plaintiff's bill to reach and apply the interest of S. A. Myers and Harry Myers in the partnership of S. A. & H. Myers, to the payment of indebtedness arising out of their individual indorsements of a series of promissory notes. The defendants carried on business under the name of S. A. & H. Myers. The partnership gave ten notes for $2,000 each, for money borrowed from the plaintiff; ten of the notes were indorsed by Samuel A. Myers and nine by Harry Myers.

On January 27, 1917, an involuntary petition in bankruptcy was filed in the United States District Court for the District of Massachusetts. The petition alleged that "Samuel A. Myers and Harry Myers both of Brookline in the County of Norfolk, co-partners trading as S. A. and H. Myers have for the greater portion of six months next preceding the date of filing this petition, had his principal place of business at Boston . . . and owes debts to the amount of $1000"; "that said Samuel A. & Harry Myers are insolvent," and had committed an act of bankruptcy. The prayer of the petition was: "wherefore your petitioners pray that service of this petition, with a subpoena, may be made upon Samuel A. & H. Myers, as provided . . . and that he may be adjudged by the court to be a bankrupt within the purview of said acts."

Schedules were sworn to and filed on February 10, 1917. The set filed is designated "Partnership Schedules." The schedule sets out that "Samuel A. Myers of Boston and Harry Myers of Brookline respectfully represent: — That they, [are in the] Clothing business . . . have been partners under the firm name of S. A. & H. Myers having their principal place of business at Boston . . . for the greater portion of the six months next immediately preceding the filing of this petition; that the said partners owe debts which they are unable to pay in full." They alleged that Schedule A contained "a full and true statement of all the debts of said partners"; that Schedule B contained "an accurate inventory of all the property . . . of said partners." The paragraph relating to Schedules "C" "D" "E" "F," in which were to be set out the individual debts and assets, were stricken out, and each individual substituted the statement "that he has no individual debts and no individual assets except household furniture and wearing apparel to the value of $300. claimed to be exempt under Revised Laws of Massachusetts Chapter 177, Section 24." In Schedule "A" of the firm debts, the International Trust Company appears as a creditor for $20,000. But the trust company does not appear in any schedule as a creditor on account of the indorsements of each of the individuals.

On February 10, 1917, there was filed a petition for a meeting of creditors to consider an offer in composition of forty per cent upon all unsecured debts. This petition was "In the matter of Samuel A. Myers and Harry Myers" and was signed Samuel A. Myers and Harry Myers. On March 3, 1917, an offer in composition was filed, "In the matter of Samuel A. & Harry Myers." The offer was addressed to the court and "Respectfully represents Samuel A. Myers, of Boston in the County of Suffolk in said District, and Harry Myers, of Brookline in the County of Norfolk, and district aforesaid." This offer alleged among other things "that they have filed in Court a schedule of their property and a list of creditors to be filed by bankrupts; and that they now offer the following terms of composition before adjudication to creditors." On March 23, 1917, they applied for

confirmation of the composition and alleged that they "have filed in court a schedule of their property and a list of their creditors, as required by law, they offered terms of composition to their creditors." On May 28, 1917, the composition was confirmed.

There was no adjudication of bankruptcy; the plaintiff proved the notes against the partnership for $20,000 and received the payment in composition. No payments were received on account of the individual indorsements on the notes. The indorsements on the notes by Samuel A. Myers and Harry Myers, created individual obligations, separate and distinct from the firm obligations. "A partner indorsing individually was a party different from the partnership and thereby might incur a double liability arising from the two distinct contracts." "In this aspect and for this purpose the partnership may be treated as personified and as an entity separate from the individuals who compose it." *Fourth National Bank* v. *Mead*, 216 Mass. 521, 523, 524. See now the uniform partnership act, St. 1922, c. 486, § 15: "any partner may enter into a separate obligation to perform a partnership contract." The involuntary petition represented that the defendants, as copartners under the name of S. A. & H. Myers, were insolvent. It bore the indorsement "S A & H Myers Debtors." The schedule filed by the defendants set out partnership assets and partnership debts. The individual liability upon which the action is predicated was not mentioned in the schedules or the composition as approved by the court.

In our opinion it cannot be said that because the offer was signed Samuel A. Myers and Harry Myers, and the confirmation of the compromise concerned "the matter of Samuel A. Myers and Harry Myers," it therefore affected the defendants' liability for their individual debts. Not only was the petition against the defendants as copartners "trading as S. A. & H. Myers" having the "principal place of business at Boston," but the only assets and debts listed in the schedule are those of the firm. They swore they had no individual debts or assets, the partnership schedules stating, that the debtors named in the "foregoing petition"

make oath that the statements therein were true. The indorsement on the schedule reads "Debtors' Schedules Samuel A. Myers and Harry Myers as S. A. & H. Myers." The offer in composition incorporated the schedule of creditors, and it was to those creditors who were listed in the schedule, that is, the partnership creditors, to whom the offer was made. The defendants made no offer of compromise to individual creditors or to any creditors except those whose names were upon the schedule. The confirmation of the composition was based on the schedule of creditors filed.

A composition partakes of the nature of a contract. *Cumberland Glass Manuf. Co.* v. *De Witt*, 237 U. S. 447, 453; citing *In re Lane*, 125 Fed. Rep. 772, 773. *Nassau Works* v. *Brightwood Co.* 265 U. S. 269. *In re Adler*, 103 Fed. Rep. 444. "A law which compels a creditor, against his will, to accept in discharge of his debt just what the debtor sees fit to offer, should be strictly construed." *In re Rider*, 96 Fed. Rep. 808, 809, 810; see *In re Kinnane Co.* 221 Fed. Rep. 762, 766. *In re Goldstein*, 213 Fed. Rep. 115, 116. Under the bankruptcy act of 1874, it was decided by this court that "a creditor, whose name or the amount of whose debt is not truly stated in the debtor's schedule, is not affected or prejudiced by the composition." *Stone* v. *Simonds*, 131 Mass. 457, 462. See *Hewes* v. *Rand*, 129 Mass. 519; *Ex parte Trafton*, 2 Lowell, 505, 506. If the composition was in the nature of a contract the plaintiff was a party to it only to the extent in which its claim against the partnership was concerned; it was not recognized as an individual creditor; no offer was made to it as the holder of a claim against the individuals. In this respect it was a stranger to the offer; it stood as any other individual creditor whose demand was not listed, to whom no offer of compromise was made and who entered into no bargain with the defendants. See *Curlee Clothing Co.* v. *Hamm*, 160 Ark. 483.

Confirmation of the composition discharges the bankrupt from his debts. Bankruptcy Act, § 14c. *McClintic-Marshall Co.* v. *New Bedford*, 239 Mass. 216, 223, 224. In *Francis* v. *McNeal*, 228 U. S. 695, creditors filed a petition in bank-

ruptcy against Francis and two others, alleging they were bankrupt individually and as a firm. Francis was found to be a partner. McNeal was the receiver and was appointed trustee; the firm was adjudicated bankrupt. McNeal brought a petition asking that the separate estate of Francis be turned over for administration in bankruptcy; his petition was granted. In the course of the opinion (page 701) it was said: "it would be a third incongruity to grant a discharge in such a case from the debt considered as joint but to leave the same persons liable for it considered as several." In that case there was an adjudication of bankruptcy and no question arose concerning the effect of a discharge upon the individual debts of Francis apart from his individual liability for the firm debts. In *Abbott* v. *Anderson*, 265 Ill. 285, the question was, Did the adjudication in bankruptcy of the insolvent partnership carry into bankruptcy the members of the partnership as individuals? It was held that the adjudication did have this effect, that the approval of the composition discharged the partners as well as the firm of the partnership's debts. In that case there was an adjudication of bankruptcy and the question of the discharge of the individual members for their individual debts apart from the firm debts was not involved. See in this connection *Liberty National Bank* v. *Bear*, 265 U. S. 365, *Carter* v. *Whisler*, 275 Fed. Rep. 743.

It has also been held that the discharge of a partnership has no effect upon the individual liability of the partners. *Horner* v. *Hamner*, 249 Fed. Rep. 134. See *In re Sugar Valley Gin Co.* 292 Fed. Rep. 508, 509. Cf. *McClintic-Marshall Co.* v. *New Bedford, supra.* It was said by Hough, J. in *In re Pincus*, 147 Fed. Rep. 621, 625, that "Individual discharges cannot be granted under an adjudication against the partnership only." See *Curlee Clothing Co.* v. *Hamm, supra; In re E. W. Adams & Co.* 283 Fed. Rep. 431, 433.

The question presented on this record is the liability of the defendants not for the firm debts but for their own individual debts, there having been no adjudication in bankruptcy, the offer of compromise including the firm creditors only. Assuming, when a partnership is adjudicated bank-

rupt the members are brought into the proceeding, and if a discharge is granted that the debts of the partners can no longer be enforced, it does not follow from this, in our opinion, if there is no adjudication of bankruptcy, the claims of all creditors of all classes not being before the court for adjustment, the individual creditors having no notice of the proceeding and no opportunity to be heard, and the petition being brought by partnership creditors that a confirmation of an offer of compromise to the firm creditors alone, will prevent the individual creditors from enforcing their demands against the defendants for their personal and individual debts. The confirmation of the compromise followed the pleadings in the case, it related to partnership demands only; it did not discharge the defendants as individual indorsers. See in this connection *United States* v. *Cox*, [March 2, 1925]; *United States* v. *Kaufman*, [March 2, 1925]; *In re Farley*, 115 Fed. Rep. 359.

The decree for the defendants must be reversed and a decree entered for the plaintiff. The form of the decree is to be settled in the Superior Court.

So ordered.

J. R. Lazenby, for the plaintiff.

E. F. McClennen, (*W. W. Johnson* with him,) for the defendants.

COMMONWEALTH OF MASSACHUSETTS.

Boston, May 7, 1925.

I certify the foregoing to be a true copy of the opinion of the Supreme Judicial Court in the case of *International Trust Company* v. *Samuel A. Myers & others* decided on the sixteenth day of April, 1925.

Ethelbert V. Grabill

Reporter of Decisions.

IN THE SUPREME COURT OF THE UNITED STATES
COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, ss. SUPERIOR COURT IN EQUITY
No. 14826.

INTERNATIONAL TRUST COMPANY

v.

SAMUEL A. MYERS, HARRY MYERS, AND S. A. & H. MYERS PARTNERSHIP.

STIPULATION.

For the purposes of a petition to the United States Supreme Court for certiorari which the defendants have asserted their intention to bring with respect to the above-entitled case, it is stipulated and agreed that the entire record to be certified for said petition or to be returned in case the same is granted, shall be the printed record as prepared in this Superior Court for entry in the Supreme Judicial Court, and opinion of the Supreme Judicial Court, and rescript from the Supreme Judicial Court to the Superior Court, and the final decree in this case entered on or about May 4, 1925, that Exhibit No. 2, Creditors' Petition, and Exhibit No. 3, Debtors' Schedules, shall not be printed but shall be transmitted to the United States Supreme Court as part of the record, and that no other part of the record need be included.

May 7, 1925.

JOHN R. LAZENBY,
Attorney for Plaintiff.

EDWARD F. McCLENNEN,
Attorney for Defendants.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 1, 1925

The petition herein for a writ of certiorari to the Superior Court for the County of Suffolk, State of Massachusetts, is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7674)